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IN THE

Supreme Court of the United States

October Term, 1973

No. A-742

HARRIS COUNTY COMMISSIONERS COURT, et. al.,
Appellants

v.

RICHARD E. MOORE, et al., *Appellees*

On Appeal From The United States District Court For The Southern District Of Texas, Houston Division

JURISDICTIONAL STATEMENT

Date: April 5, 1974

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of a Three-Judge United States District Court for the Southern District of Texas, Houston Division, entered on January 30, 1974, declaring the Texas Statute, Article 2351½, Vernon's Annotated Texas Civil Statutes, to be facially unconstitutional, and permanently enjoining an order passed June 28, 1973, by the Harris County Commissioners Court which redistricted the County's eight justice of the peace and constable precincts.

Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

ORDER AND OPINION BELOW

A copy of the judgment Order, issued January 30, 1974, of the District Court for the Southern District of Texas, Houston Division, is appended hereto as Exhibit A. A copy of the opinion of the District Court, filed February 8, 1974, and not yet reported, is appended hereto as Exhibit B.

JURISDICTION

This suit was brought, as alleged by various of the Appellees, under 28 U.S.C.A. 1343, 2201 and 2281, and 42 U.S.C.A. 1983 and 1985(3), seeking essentially to have declared unconstitutional a Texas constitutional provision, viz., Article 5, Section 18, and a Texas statute, viz., Article 2351½(c), and to have set aside an Order of the Harris County Commissioners Court redistricting the County's eight justice of the peace and constable precincts, which Order by reason of the effect of the said Article 2351½(c) vacated the offices of five of the Appellees, three of whom were justices of the peace and two of whom were constables.

The judgment of the District Court was entered January 30, 1974, and notice of appeal was filed in that Court on February 4, 1974. On the same day that the notice of appeal was filed, Mr. Justice Powell granted an Order staying the execution and enforcement of the judgment of the District Court. On February 19, 1974, the Supreme Court entered an Order denying the Appellees' motion to vacate Mr. Justice Powell's stay order.

The jurisdiction of the Supreme Court to review the District Court's decision by direct appeal is conferred by Title 28, United States Code, Section 1253. The fol-

lowing decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Turner v. Fouche,* 396 U.S. 346; *Sailors v. Board of Education of County of Kent,* 387 U.S. 105; *Spielman Motor Sales Co. v. Dodge,* 295 U.S. 89.

QUESTION PRESENTED

Where a State requires that its justices of the peace and constables reside in the precinct in which they are elected to serve, is it a violation of the equal protection guarantee for the State to provide that following a redistricting by a county of its justice precincts if in any precinct there reside an excessive number of justices of the peace or constables for the limited number of such positions authorized therein, such positions shall become vacant to be filled as other vacancies?

STATE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 5, Sections 8, 18 and 24; Article 16, Sections 14 and 65, Vernon's Annotated Texas Constitution; Articles 1908, 2351½, 2355, Vernon's Annotated Texas Civil Statutes; Article 1.05, Vernon's Annotated Texas Election Code.

STATEMENT

Appellants, hereinafter referred to as the Commissioners Court, collectively comprise the general governing body of Harris County, Texas. The duties and responsibilities of such a unit of state government were reviewed at length by the Supreme Court in *Avery v. Midland County, Texas,* 390 U.S. 474. Among such duties and responsibilities is that set out in Article 5, Section 18 of the Texas Constitution as follows:

> "Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. *Divisions shall be made by the Commissioners Court provided for by this Constitution.* In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold office for four years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace. * * *" See Exhibit C.

The foregoing constitutional provision, embodied in the state's constitution ratified by the people of Texas on February 15, 1876, has been amended only once, on November 2, 1954, to the extent only of increasing the term of office of the officers in question from two to four years. As stipulated by the parties in this cause, Harris County was last divided into the eight precincts in question in the year 1876. To correct the evils attendant upon the severe malapportionment among such precincts that had developed in the ensuing 97 years, the Commissioners Court on January 12, 1973, appointed a committee of nine persons to study and recommend plans for redistricting such precincts as well as the county's four commissioner precincts. Such committee consisted of a county commissioner, a justice of the peace, a constable, a black, a chicano, a Republican, a Democrat, a woman and a University professor with expertise in working with redistricting plans.

After a considerable number of public meetings of the committee as well as public meetings held by the Commissioners Court, all of which were given wide publicity

in various newspapers throughout the county, the Commissioners Court on June 8, 1973, adopted a plan for redistricting the four county commissioner precincts which met the strict requirements of the one-man, one-vote principle of *Avery*, supra. Thereafter, on June 28, 1973, the Commissioners Court adopted a plan for redistricting the county's eight justice precincts to become effective July 1, 1973.

The stated purposes for redistricting the justice precincts were to eliminate to as great an extent as practicable the gross population disparities existing between such precincts, to more fairly apportion the workload of justices of the peace and constables because of the equal pay received by the respective officers within each class, to redraw the precincts in such a manner as to follow ethnic patterns where possible to promote minority participation, to provide a greater availability of services by authorizing a second justice in Precincts 2 through 8 which, unlike Precinct 1 which had two such positions, theretofore had had only one justice, and to redraw the precinct lines on the basis of census tract lines.

The population counts of the eight justice precincts, before and after the redistricting, follow:

Precinct	Before	After
1	999,424	343,765
2	436,974	146,054
3	111,106	169,997
4	81,879	175,769
5	6,966	337,844
6	8,848	180,101
7	11,976	238,401
8	84,739	149,981

Because of the exceedingly small population counts of Precincts 4, 5, 6 and 7 and of their geographical contiguity prior to the realignment, as a result of the redistricting new Precinct 4 was comprised of an area formerly made up of all of old Precincts 4, 5 and 7, and portions of old Precincts 3 and 6. See Exhibits D and E for the geographical outlines of the eight precincts before and after the redistricting. Because of the location of their respective residences, four justices of the peace and three constables of certain of these former precincts as they existed prior to redistricting, ended up as residents of the new Precinct 4.

Article 1.05 of Vernon's Annotated Texas Election Code (Exhibit F) requires that the person holding such an office as justice of the peace or constable reside in the precinct for which such office is filled. To provide for just such a situation as occurred here, i.e., when as a result of a redistricting of a county's justice precincts there are more than two justices or more than one constable ending up residing in a precinct as so changed than there are offices existing therefor, viz., two justice and one constable posts, the Texas Legislature in 1965 enacted Article 2351½, subsection (c) of which provides:

> "*When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished,* if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed. he shall continue in office as justice or constable of that precinct for the remainder of the term to which he was elected or appointed. *If more than one justice or*

constable resides within a precinct as so changed, or if none resides therein, *the office shall become vacant* and the vacancy shall be filled as other vacancies; provided, however, that *in precincts having two justices,* if two reside therein, both shall continue in office, and *if more than two reside therein, both offices shall become vacant.*" See Exhibit G.

Because of the fact that following the redistricting, four justices of the peace and three constables of the former precincts resided in new Precinct 4, the two justices of the peace and one constable positions authorized for such precinct were vacated by reason of the foregoing statute. The Commissioners Court then, under Article 2355, Vernon's Annotated Texas Civil Statutes, proceeded to fill such vacancies. On the day that the order of redistricting was passed, June 28, 1973, one of the Appellees herein, Moore, filed suit to enjoin such action in a State District Court, which under state constitutional Article 5, Section 8 and state statutory Article 1908, has appellate jurisdiction and general supervisory control over the Commissioners Court. The State Court on a hearing the following day denied a temporary injunction. Thereafter, on July 20, 1973, and without further exhausting the State remedy thus invoked, Moore, joined by Bolton, both deposed constables, and Doering, Mahan and Zaboroski, deposed justices of the peace, together with two citizens who had resided in one or the other of the old precincts and who now reside in new Precinct 4, viz., Appellees Boynton and Neeley, instituted suit in the United States District Court for the Southern District of Texas, Houston Division.

In its Opinion issued February 8, 1974, the District Court declared that insofar as Article 2351½ operates

to terminate the term of a duly elected justice of the peace or constable upon the circumstance that a redistricting places him in a precinct with other such officers, it invidiously and irrationally discriminates between him and other such officers in other precincts not so affected. Additionally, the District Court declared that the effect of such statute in cutting short the term of such officers also constituted an impermissible abridgement of the franchise of those voters who had been entitled to vote for them. Underlying both of these conclusions, the District Court found that no compelling state interest is served to justify such effects of the statute.

THE QUESTIONS ARE SUBSTANTIAL

A. The equal protection guarantee of the Fourteenth Amendment was in no way violated by the vacating of the offices in question, since such offices are local offices created for purely state purposes and their creation, rearrangement or abolishment for compelling state reasons relate solely to the internal administration of the state's political structure.

The issues involved in this appeal are similar to those raised in such cases as *Taylor v. Beckham,* 178 U.S. 548; *Higginbotham v. City of Baton Rouge, La.,* 306 U.S. 535; and *Snowden v. Hughes,* 321 U.S. 1. Generally, the issues involve the power of a State to provide for a policy with reference to its political and internal administration, and more particularly, its power to create for purely state purposes certain local offices and when compelling and justifying reasons call for its exercise, the power to abolish or vacate such offices.

In brief, the people of Texas by their constitution have vested in the Commissioners Court of each of the state's 254 counties the responsibility to divide, and when compelling and justifying reasons call for such, to redivide from time to time, its county into a certain number of precincts for the election within each of not more than two justices of the peace and one constable. Article 5, Section 18, Vern. Ann. Tex. Const. Additionally, the Legislature has prescribed that such precinct officers must be residents of the precinct in which they serve. Article 1.05, Vern. Ann. Tex. Election Code. In this case the Commissioners Court of Harris County, pursuant to its constitutional responsibility in the face of a compelling need to redistrict the county's eight precincts because of their severe malapportionment, realigned such precincts. Because the smallest precincts were contiguous one to another prior to the realignment, the redistricting necessarily resulted in one new precinct incorporating their area which in turn resulted in there being more justices and constables of such former precincts residing in the new precinct than there were positions authorized to be filled therein.

Prior to 1965 the judicially applied law of Texas under constitutional Article 5, Section 18 was such that following such a redistricting as occurred here, all of the justice and constable positions in all eight new precincts would have been considered vacant to be filled anew by appointment made by the Commissioners Court. In that year the Legislature enacted statutory Article 2351½, Vern. Tex. Civ. Stat., which provided that following such a redistricting a vacancy would occur only in such instances when no previously elected or appointed justice or constable resided in a new precinct, or when, as a result of the

realignment there resided in a new precinct an excessive number of such officers for the position or positions authorized therein. Otherwise, all such officers would be entitled to continue in office for the remainder of their elective or appointive terms.

What in reality is being challenged here is the right of the State to provide for the carrying out and enforcement of its policy with reference to its political and internal administration. In *Taylor v. Beckhan,* supra, the Supreme Court declared that "In its internal administration the state (so far as concerns the Federal government) has entire freedom of choice as to the creation of an office for purely state purposes, and of the terms upon which it shall be held by the persons filling the office." In *Higginbotham v. City of Baton Rouge, La.,* supra, the Supreme Court declared that "the legislative power of a State, except so far as restrained by its own Constitution, is at all times absolute with respect to all offices within its reach. It may at pleasure create or abolish them, or modify their duties. It may also shorten or lengthen the term of service."

And in *Snowden v. Hughes,* supra, the Supreme Court distinguished between "rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established by state law," and those rights of a citizen derived from his national citizenship. While as the District Court pointed out in its opinion, *Snowden* involved only a candidacy for office, it is submitted that in principle what the Supreme Court said in *Snowden* applies with no less force to the rights of the Appellees in the case at hand. The Court in *Snowden* declared that denial by state action of a right to state

political office is neither a denial of a right of property or liberty secured by the due process clause, nor a denial of the equal protection of the laws unless there is shown to be an element of intentional or purposeful discrimination. Notwithstanding that the Court below did not, and indeed could not, find an element of intentional or purposeful discrimination in the face of the overwhelming need for the redistricting and the manner in which the Commissioners Court of necessity had to realign the specific new precinct in question to achieve some degree of reasonable apportionment, it nevertheless concluded that there had been a denial of equal protection of the laws.

In *Sailors v. Board of Education of County of Kent,* 387 U.S. 105, the Supreme Court stated that "Save and unless the state, county, or municipal government runs afoul of a federally protected right, it has vast leeway in the management of its internal affairs." As an example of a state attempt to defeat such a federally protected right the Court cited the realignment of political subdivisions in *Gomillion v. Lightfoot,* 364 U.S. 339, which involved an attempt to deny a person his vote because of race. No such invidious or discriminatory intention, or any other, formed the basis for the realignment of the justice precincts in the case at hand.

It is submitted that the compelling necessity for the redistricting of the county in the first place, coupled with the compelling state interest in requiring such precinct officers to reside in the precinct in which they serve, fully justified the vacating of the offices in question.

History Of The Texas Law

Article 5, Section 18 of the Texas Constitution was adopted by the people of Texas in the ratification of the

state's present constitution on February 15, 1876. Gammel's Laws of Texas, 1822-1897, Volume 8, page 779. The first reported state case to pass on this provision was that of *State ex rel. Dowlen v. Rigsby,* 43 S.W. 271 (Tex. Civ. App. 1897, application for writ of error denied by the Texas Supreme Court at 43 S.W. 1101 for the reason that the case "was correctly decided in the court of civil appeals"). The Texas court declared:

> ". . . The power to divide the county into justices' precincts is also given by the statute, but not in terms so explicit as those used in the constitution. Rev. St. 1895, art. 1537. There can be no doubt that both constitution and statute confer the power, and the only question is as to its extent. *It is contended that a limitation upon the power is found in the constitutional provision fixing the terms of office* of precinct officers; *and that, since they are to hold for two years* (now four), *it follows that the precincts cannot be changed during the terms, because the power to alter them would practically enable the court to destroy the office.* The language of the constitution expresses no such limitation. The division is to be made 'from time to time.' The reason for the division is to be the convenience of the people; and the judge, both as to time and convenience is the court.
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> * * *
>
> ". . . *the power to establish the precincts does not necessarily conflict with the provision fixing the terms of office. They must stand together. The office is taken subject to the power to change the boundaries of the precincts.* This is no anomaly in our law. All county officers whose compensation is derived from perquisites, and therefore depends to some extent on the territory in which they exercise their functions, hold their offices subject to lawful power to alter that territory. *While the office is property, it is held*

> *subject to the proper exercise of all such powers as these.* There is no contract between the state and its officers which forbids such action. Mechem, Pub. Off. § 855."

In the subsequent case of *Williams v. Castleman,* 247 S.W. 263 (Tex. Sup. Ct. 1922), the Texas Supreme Court reviewed at length the history of Article 5, Section 18, tracing it back to the Constitution of the Republic of Texas, and declared:

> ". . . The Constitution has prescribed that the power of determining the number of justice precincts, and of dividing the county into them, shall be exercised 'from time to time,' which means it has a potential existence at all times, and the division, redivision, or redetermination may be made at any time.
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> * * *
>
> "It is thus seen that there is no limitation on the time when the commissioners' court may divide a county into justice precincts, and that, aside from the maximum and minimum prescribed in the Constitution, there is no limitation as to number. The Constitution does not state how the power of division by the commissioners' court shall be exercised, nor does the statute. * * * *It is certain that, in the absence of reasonable legislative action, the commissioners' court may perform the duty enjoined upon them in their own way, so long as that performance does not amount to a gross abuse of power, is not fraudulently exercised, or is not so grossly arbitrary as that, under principles unnecessary to discuss, it might be void and amount to no action."*

The holdings of *State ex rel. Dowlen v. Rigsby,* supra, and *Williams v. Castleman,* supra, have been unanimously

adhered to by the Texas courts in the following cases: *Hastings v. Townsend,* 136 S.W. 1143 (Tex. Civ. App. 1911, no writ history); *Turner v. Allen,* 254 S.W. 630 (Tex. Civ. App. 1923, error dismissed); *Ward v. Bond,* 10 S.W.2d 590 (Tex. Civ. App. 1930, no writ history); *Brown v. Meeks,* 96 S.W.2d 839 (Tex. Civ. App. 1936, error dismissed); *Meredith v. Sharp,* 256 S.W.2d 870 (Tex. Civ. App. 1953, error refused, n.r.e.).

In 1962, the Attorney General of Texas in an advisory opinion, No. WW-1251, February 2, 1962, declared the Texas law to be as follows:

> "The Commissioners' Court may abolish old justice precincts and re-divide the county into new justice precincts at any time, so long as there is a minimum of four and not more than eight justice precincts in the county. *When such justice precincts are abolished the offices in the old precincts become vacant and the officers of the newly created justice precincts must be appointed by the Commissioners' Court.*"

Considered in the light of the pre-existing state of the Texas law, the 1965 enactment of Article 2351½(c) was very obviously intended by the Legislature to ameliorate the effect of a redistricting on the vacating of offices. It was clearly intended to limit to as few as possible the number of vacancies theretofore caused by a redistricting, by requiring a commissioners court to retain in office all those officers residing in those newly-redistricted precincts which do not end up with a surplus of such officers to fill the limited number of positions authorized, keeping in mind the statutory requirement that such precinct officers must reside in the precinct which they serve. It is easily conceivable that in a redistricting

which does not involve the vastly disproportionate precincts which had to be contended with in this case, no new precinct would wind up with an excessive number of officers, resulting in no vacancies occurring.

Shortly after the statute was enacted the Attorney General of Texas in advisory Opinion No. M-68, May 8, 1967, construed section (c) to be a legislative usurpation of power constitutionally invested in a county commissioners court, declaring "that the Commissioners Court may, if they desire, effectuate a plan of succession of the type contemplated by Article 2351½(c), supra, but that their power to create vacancies or abolish offices cannot be taken away by the enactment of legislation." Had the Commissioners Court in this case adopted the view of the Texas Attorney General and ignored the statute, their redistricting action, in effectually abolishing all eight of the former precincts, would have resulted in vacating all of the justice and constable positions in all of the eight precincts, not merely in new Precinct 4. To what then would a Fourteenth Amendment equal protection claim attach? In such case all of the justices and constables in all eight of the county's precincts would have had their offices vacated and all, together with all of the voters residing in each of the precincts, would have been treated equally and alike. In such event, the Appellees would have been reduced merely to the claim that having once succeeded to the state offices in question they could not be divested of same by any state action no matter how compelling the need for a reapportionment of the precincts, or failing that, that the requirement that they reside in the precinct for which the office has been created is federally untenable. We submit that they would fail on either ground for reasons hereinafter set out.

Compelling State Interests Were Indeed Served By The Redistricting And Article 2351½(c)

A studied view of Exhibit D appended hereto, depicting the outlines of the eight precincts before the redistricting, considered in the light of the population of each of such precincts, can leave no doubt of the compelling need for the redistricting action. Such precincts had not been redistricted since the year 1876, and the severe malapportionment resulting therefrom is evidenced by the population counts earlier set out. These ranged from the low figures of 6,966, 8,848 and 11,976 in Precincts 5, 6 and 7, respectively, to the high figures of 999,424 and 436,974 in Precincts 1 and 2, respectively. Obviously, the services affordable by one justice and one constable to the residents in Precinct 2 with its population of 436,974 would on the face of it clearly seem to be grossly unequal to the same services from a like number of such officers available to the residents of Precinct 5 with its count of 6,966. Additionally, the salaries for all of the justices were the same in each of the precincts, as were those for each of the constables, which in itself was unequal treatment for those officers serving in the vastly more densely populated precincts. The evils of so severe a malapportionment of precincts as existed here prior to the redistricting are self-evident.

With regard to the District Court's view that no compelling state interest is served by the effect of Article 2351½(c) of vacating offices in some precincts upon the circumstance that a redistricting might result in there being more officeholders than there are authorized positions therefor in such precincts, it is submitted that Texas' statutory requirement that a justice or constable be a resident of the precinct which he serves is indeed a state

interest which is compelling enough to justify the effect of such statute. Article 1.05, Vern. Ann. Tex. Election Code, prescribes a six months pre-election residency requirement for such offices and in the case of *Whitmarsh v. Buckley,* 324 S.W.2d 298 (Tex. Civ. App. 1959, no writ history), in which a portion of one school district was deannexed and added to another and the plaintiffs were seeking to enjoin two trustees of the reduced district from continuing to serve because they no longer resided in such district by reason of the deannexation, the Texas Court of Civil Appeals declared:

> "We think the term 'precinct' is used in a general sense to include all political units within the county, except municipal, that are less than county-wide in area. *The evident purpose of the statute is to require representation of a political unit by one who is elected who resides in the unit which he is to serve.* It is true that it does not deal specifically with removal from office upon cessation of residence once a person has been elected, but it would in effect be meaningless if it is interpreted as restrictive only of residence at the time of election and qualification. If it is so restricted, a person could be elected and qualify and then move out of the political unit and yet continue to act in an official capacity when he is no longer affected by the acts he performs. A statute should be liberally construed to effect the intention of the legislature. *It has ever been traditional with Texas to require representation by elective officers who are residents of the political unit for which the elected officer acts.*"

In *Hadnott v. Amos,* 320 F. Supp. 107 (1970), affirmed by the Supreme Court at 401 U.S. 968, the three-judge United States District Court for the Middle District of

Alabama, in passing on a similar Alabama statute which required a twelve-month pre-election residency, *as well as residency during continuance in office,* for circuit judges of that state, declared the following:

> "The State of Alabama has a compelling state interest in exposing to the voters for a substantial period of time before election the person who will be a candidate for state circuit judge.
>
> * * *
>
> "We consider it to be of urgent importance that the voter have an opportunity to observe, learn about and appraise those who seek to be candidates for a key judicial office that touches important events and relationships of their lives and of the community in which they live. There are innumerable qualities and qualifications that are relevant."

No less important considerations apply to a Texas justice of the peace. Justice courts exercise original jurisdiction in all civil cases where the amount in controversy is two hundred dollars or less; in all cases of forcible entry and detainer, and all cases involving foreclosure of mortgages and the enforcement of liens on personal property, where the amount in controversy is within their jurisdiction; they have the power to issue writs of attachment, garnishment, and sequestration within their jurisdiction; they act as a Small Claims Court in all actions for the recovery of money, not exceeding the sum of one hundred fifty dollars; they have jurisdiction in all criminal cases involving misdemeanors for which the fine to be imposed does not exceed two hundred dollars; they have the power to issue warrants of arrest, advise an accused of his rights, set bail without restrictions as to amount; conduct examining trials, commit defendants to jail; and

to take forfeiture of all bonds given for the appearance of any party at their courts, regardless of amount. Article 2385 et seq., 2460a, Vern. Ann. Tex. Civ. Stat.; Articles 4.11, 15.01 et seq., 16.01 et seq., 4.13, Vern. Ann. Tex. Code of Crim. Proc.

In *Detroit Police Officers Ass'n v. City of Detroit,* 190 N.W.2d 97 (Mich. Sup. Ct. 1971), appeal dismissed "for want of a substantial federal question" by the United States Supreme Court at 405 U.S. 950, the Michigan Supreme Court, in striking down a constitutional challenge against a city ordinance requiring that police officers reside within the City of Detroit declared:

> "The job of a policeman does have 'natural distinguishing characteristics' from all other city employees. There is a special relationship between the community policed and a policeman. A policeman's very presence, whether actually performing a specified duty during assigned hours, or engaged in any other activity during off duty hours, provides a trained person immediately available for enforcement purposes." Also, see *Ahern v. Murphy,* 457 Fed.2d 363.

The same considerations of course apply to the Texas requirement that a constable reside within the precinct in which he serves. He, like any city policeman, is also a peace officer authorized to make arrests. Additionally, he is charged with executing all process, warrants and precepts, and attending upon the justice courts in his precinct. Article 6878 et seq. The Texas requirement that its justices and constables live within the specific precincts for which they are elected or appointed to serve is not at all unlike the federal requirement that District Judges and Marshalls reside in the districts for which they are appointed to serve. 28 U.S.C.A. 134 and 561.

With regard to the District Court's view that it was not compelling that the offices in question be vacated inasmuch as Section (b) of the statute in question which provides that the term of office of a county commissioner is not to be affected by a redistricting, even though its effect may be to place his residency outside the precinct for which he is elected, the same contention was raised by the litigants in the Texas case of *Whitmarsh v. Buckley,* supra, and disposed of by the Texas court as follows:

> "We find nothing in our holding contrary to the case of Childress County v. Sachse, Tex. Civ. App., 310 S.W.2d 414, writ refused, n.r.e. Tex., 312 S.W. 2d 380. In that case the Court held that a county commissioner, who was no longer a resident of the precinct from which he was elected because the Commissioners Court had changed the precinct lines, did not thereby vacate his office. However, a county commissioner is merely elected from a precinct that is created for the convenience of the people under the mandate of Article 5, Section 18 of the Constitution. He is not, however, an officer of that political subdivision. He is a county officer serving the entire county as a member of the Commissioners Court, which as a body is the governing unit for the whole county. He is elected, not to act authoritatively for just his precinct. He is elected to serve the whole county. In the Sachse case, Sachse still lived in the political unit he was elected to serve, to wit, Childress County."

The holding in *Childress County v. Sachse,* referred to above, was subsequently embodied as section (b) of Article 2351½. See *Villareal v. Bustamente,* 480 S.W.2d 231 (Tex. Civ. App. 1972, no writ history). And with it clearly in mind, the Legislature provided for a different

handling of justices and constables in section (c) thereof, obviously with the residency requirement in mind.

The District Court also took the view that it was not necessary to effect the redistricting in question in mid-term under the apparent impression that it could have been done so as to coincide with the expiration of the terms of the officers in question so that such terms would not have been cut short; however, under Article 16, Section 65 of the Texas Constitution, providing for the staggering of the various terms of the offices in question, no redistricting could ever be effected which would not cut short the term of office of at least some of the officers in question. Article 16, Section 65 provides for staggering the terms of office of justices of single justice precincts with constables so that such justices are elected at one general election for four years and constables are elected at the following general election for four years. In the case of a two justice precinct, as was Precinct One prior to the redistricting and as all are following the redistricting, the justice of the uneven place number, viz., No. 1, runs at one general election for four years and the justice of the even place number, viz., No. 2, runs at the following general election for four years. In *Pate v. El Paso County, Texas,* 324 F. Supp. 935, affirmed by the Supreme Court at 400 U.S. 806, the validity of this constitutional provision, insofar as it provides for staggered terms for County Commissioners of even versus uneven numbered precincts was upheld on the ground that it "insures that the commissioners court have some continuity in its membership and experience, thereby providing for more efficient and effective county government." The same considerations would of course apply to justify the staggering of the terms of office as between justices of even versus uneven

numbered positions within a precinct as well as the staggering provided for between justices and constables.

With regard to the District Court's view that the effect of Article 2351½(c) to prematurely end the term of office of the five Appellee officeholders constituted an impermissible abridgement of the franchise of those entitled to vote for them, it is difficult to reconcile such view with the holding of *Pate v. El Paso County, Texas,* supra. In *Pate,* as a result of redistricting certain voters were transferred from commissioner precinct two to commissioner precincts one and three. While their complaint was of the postponement of their right to vote for a commissioner of their choice for another two years because of the staggering effect of Article 16, Section 65, it is clear that after the realignment they would no longer be represented by the officer for whom they had been entitled to vote at the last election. Whether as a result of the realignment of the precincts, a voter is no longer represented by the officer he was entitled to vote for at the last election either by reason of the fact that the realignment puts him outside the new precinct in which the officer continues to serve or by reason of the fact that the officer's term has been cut short by reason of the effect of Article 2351½(c) the effect is the same on the voter. In either case after a realignment he is no longer represented by the officer or officers he had been entitled to vote for at the last election. In any event the need to correct the severe malapportionment existing in the precincts prior to the Commissioners Court's redistricting action in this case would surely be a compelling enough state interest to override the interests of voters in any particular precinct to have the continued service of the officer or officers for whom they had been entitled to vote at the last election. *Pate*

v. El Paso County, Texas, supra; *Carr v. Brazoria County, Texas,* 341 F. Supp. 155, affirmed 468 Fed. 2d 950; *Robinson v. Zapata County, Texas,* 350 Fed. Supp. 1193.

B. The District Court should have abstained from deciding this cause to afford the Texas courts the opportunity to determine the question of whether or not residency within the county, as distinguished from residency within a precinct, is required under the state constitution, the resolution of which in favor of Appellees would render unnecessary a federal constitutional decision.

The validity of Article 2351½(c), under either the state or federal constitutions, has never been passed on by the Texas Supreme Court. In only one Texas Court of Civil Appeals decision has such a court been confronted with the actual application of section (c) of the statute. In *Villareal v. Brooks County,* 470 S.W.2d 60 (Tex. Civ. App. 1971, no writ history), a justice of the peace whose office had been determined to be vacated by reason of a redistricting, like Appellees here, filed suit to determine title to the office. The trial court ruled against his reinstatement to office and on appeal, the Court of Civil Appeals declared that the evidence was conclusive that he had established a new residence within the new precinct prior to the time the redistricting became effective, and since he was the only previously elected or appointed justice living within the boundaries of the new precinct he was entitled to have continued in office for the remainder of the term to which he had been elected. His term having expired before the appellate court's decision, such

officer recovered his salary from the time he was ousted from office to the date of expiration of such term.

Villareal clearly evidences the adequate state remedy available to the Appellees here, but, of especial significance to the case at hand, is what the Court of Civil Appeals declared as follows:

> "In view of the disposition we have made of this case, *we do not consider appellant's contention that, since the office of justice of the peace is a county office, only residence within the county, as distinguished from residence within the justice precinct, is constitutionally required and that, therefore, Article 2351½, insofar as it attempts to make residence within the precinct a qualification for continuing in office, is unconstitutional.* Nor do we consider the contention that the order of January 13, 1969, is void as a violation of the 'one man, one vote' rule promulgated by the Supreme Court of the United States in several reapportionment cases."

Appellees in this case, like the Plaintiff in *Villareal,* have of course also advanced the contention that being classed as "county officers" under Article 5, Section 24 and Article 16, Section 14 of the Texas Constitution, their residence need only be in the county and not in a particular precinct and, therefore, a redistricting which leaves their residences outside of the precincts in which they were elected but still within the county, would not effect a vacating of their offices. They contend that under the state constitution they should be treated no differently than are the county commissioners under section (b) of the statute. Thus if the Texas Supreme Court should rule that the positions of a justice of the peace and/or constable are "county offices" under the state constitutional pro-

visions and only residence within the county, as distinguished from residence within the justice precinct is required, Article 2351½(c) and Article 1.05 of the Texas Election Code, insofar as they attempt to make residence within the precinct a qualification for continuing in office following a redistricting, would be unconstitutional under the state constitution. Such holding would of course be favorable to Appellees and would avoid a federal constitutional decision under the Fourteenth Amendment.

The United States Court of Appeals for the Fifth Circuit on almost this identical question, in *Romero v. Coldwell,* 455 F.2d 1163, abstained from deciding whether the jurisdiction of a Texas justice of the peace was county-wide or confined to his precinct. In a class-suit seeking the application of the one-man, one-vote concept to justice precincts in El Paso County, Texas, the plaintiffs contended that a Texas justice of the peace has county-wide jurisdiction as opposed to that merely for his precinct and, therefore, one-man, one-vote should apply in the apportionment of a county's justice precincts. The United States Court of Appeals, unlike the District Court below which concluded that such jurisdiction is state-wide, citing only Texas statute Article 2385, with which conclusion Appellants strenuously disagree, exhaustively reviewed the Texas law relating to the question and concluded that "(C)ontroversy in Texas over the extent of jurisdiction of justices of the peace appears to be of long standing." The Circuit Court of Appeals, in modifying the lower court's dismissal with prejudice to one without, abstained to allow the litigants to afford the Texas courts the opportunity to pass on the question, the resolution of which, the Court pointed out, might well obviate the necessity of determining the federal constitutional question.

Abstention also was recently applied in two other Texas federal cases, both of which ironically involved Article 2351½, but county commissioner redistricting under section (a) rather than section (c), *Carr v. Brazoria County, Texas,* 341 F. Supp. 155, affirmed 468 Fed. 2d 950; *Robinson v. Zapata County, Texas,* 350 Fed. Supp. 1193. In *Carr* the Court noted that "portions of Article 2351½ have twice been deemed void under the State Constitution in advisory opinions of the Attorney General of Texas. See Op. Atty. Gen. No. M-68 (May, 1967); Op. Atty. Gen. No. M-562 (January, 1970). Finally, although the statute has been on the books since 1965, this Court is not aware that Article 2351½(a) has ever been authoritatively construed in any reported opinion of any Texas court." In *Robinson* the Court declared that before it sets out to determine what the statute means or decides the fate of the litigants, "the Texas courts should have a chance," citing *Harris v. Samuels,* 440 F.2d 748 (5th Cir. 1971), cert. den. 404 U.S. 832, 92 S.Ct. 77, 30 L.Ed.2d 62.

To further muddy the waters as to the lack of clarity in the Texas law, Appellants would note that the Texas Attorney General has again issued another advisory opinion which, while it does not treat of Article 2351½(c) specifically, stirs even more the confusion now heavily rampant in Texas about the very question involved in this case. In Tex. Atty. Gen. Op. No. H-220, January 29, 1974, it is concluded that "Justices of the peace and constables, elected to a full term, are entitled to serve the entire four years and a redistricting of their precincts by the commissioners court resulting in a justice or constable not living in his precinct, does not vacate his office."

In reaching such conclusion the Texas Attorney General relied on the Texas Court of Civil Appeals decision of *McGuire v. Hughes,* 452 S.W.2d 29 (Tex. Civ. App. 1970, no writ history). Aside from the fact that *McGuire* did not involve a redistricting and, therefore, did not address itself to Article 2351½(c), and was, therefore, erroneously relied on, the Texas Attorney General Opinion flies in the face of not only the statute itself, but the Texas Supreme Court's approval of *State ex rel. Dowlen v. Rigsby,* supra; the Texas high court's own holding in *Williams v. Castleman,* supra; and the even more recent cases of *Villanueva v. Harville,* 419 S.W.2d 711 (Tex. Civ. App. 1967, no writ history), which on the almost identical facts of *McGuire,* found an opposite result; and *Telles v. Samples,* 500 S.W.2d 677 (Tex. Civ. App. 1973, writ history as yet unreported).

In *Telles* the plaintiff had been elected in the November 1972 general election as constable of precinct number one of El Paso County, Texas. In December the commissioners court ordered a redistricting effective January 1, 1973, reducing the county's justice precincts from eight to six and thereby eliminating plaintiff's position. In upholding a denial of the plaintiffs application for a mandamus to compel payment of his salary, the Court of Civil Appeals declared:

> "If the Commissioners Court has the authority to set the number of precincts at not less than four nor more than eight, it must have the authority to reduce

> the total number from eight to six, as was done in this instance. This necessarily means some elected officials will not be able to qualify and serve when redistricting takes place between the time of the election and the date such officials take office. But we find no constitutional or statutory time limit on when the Commissioners Court may order a redistricting plan into effect."

Because of the present state of turmoil in the Texas law revolving around the issue of whether justices of the peace and constables are "county officers," whose residences need only be within the county as distinguished from residence within a precinct, and that therefore, Article 2351½(c) insofar as it attempts to make residence within the precinct a qualification for continuing in office following a redistricting, would be unconstitutional under the state constitution, and because the Texas Supreme Court might well resolve this question in favor of the Appellees and thereby render unnecessary a federal constitutional decision under the Fourteenth Amendment, it is submitted that the District Court should have abstained from deciding this cause under the principles laid down in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, as was done in *Romero v. Coldwell, Carr v. Brazoria County, Texas* and *Robinson v. Zapata County, Texas,* supra.

CONCLUSION

It is submitted that the questions presented by this appeal are substantial and that they are of public importance for which reasons it is prayed that probable jurisdiction be noted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

(1) The undersigned counsel for the Appellants do hereby certify that on this 3rd day of April, 1974, they did deposit in the United States Mail, by Registered Mail, Return Receipt Requested, addressed to each of the following Appellees' Attorneys at the address shown, three (3) true and correct copies of this instrument, entitled, "Jurisdictional Statement."

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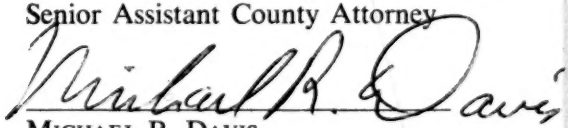
(2) All parties required to be served have been served.

Signed:

EDWARD J. LANDRY
Senior Assistant County Attorney



MICHAEL R. DAVIS
Assistant County Attorney

Attorneys for Appellants

APPENDIX

This appendix contains the following listed exhibits:

Exhibit A —Judgment Order of the District Court

Exhibit B — Opinion of the District Court

Exhibit C — Article 5, Section 18, Vernon's Annotated Texas Constitution

Exhibit D — Precinct Map before dedistricting

Exhibit E — Precinct Map after redistricting

Exhibit F — Article 1.05, Vernon's Annotated Texas Election Code

Exhibit G — Article 2351½, Vernon's Annotated Texas Civil Statutes

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOF THE SOUTHERN DISTRICT OF TEXAS
Houston Division

CIVIL ACTION NO. 73-H-993

RICHARD E. MOORE, J. C. BOLTON, VERNON G. DOERING, J. W. MAHAN, GENE ZABOROSKI, and JOHN HOWE BOYNTON, on His Own Behalf and on Behalf of Every Resident Citizen of the Former Justice of the Peace Precincts Nos, 5, 6, and 7 of Harris County, Texas

v.

HARRIS COUNTY COMMISSIONERS COURT, WILLIAM ELLIOTT, Individually and as County Judge of Harris County, E. A. LYONS, Individually and as a Member of the Harris County Commissioners Court, ROBERT ECKELS, Individually and as a Member of the Harris County Commissioners Court, JAMIE BRAY, Individually and as a Member of the Harris County Commissioners Court, and TOM BASS, Individually and a a Member of the Harris County Commissioners Court

ORDER

This action came on for hearing before a three-judge district court composed of the Honorable Thomas G. Gee, Circuit Judge, the Honorable John V, Singleton, Jr., District Judge, and the Honorable Carl O. Bue, Jr., District Judge, and the issues having been duly heard and decision having been duly rendered

It is ORDERED and ADJUDGED that

I. This court has jurisdiction under Title 28, U.S. C.A. § 2281.

II. The Texas statute Article 2351½, Vernon's Ann. Civ. St., is facially unconstitutional.

III. The order of the Commissioners Court of Harris County, Texas, of June 28, 1973, complained of herein issued pursuant thereto is therefore permanently enjoined.

An opinion of this court will follow.

DONE at Houston, Texas, on this the 30th day of January, 1973.

/s/ _____
Thomas G. Gee
Circuit Judge

/s/ _____
John V. Singleton, Jr.
District Judge

/s/ _____
Carl O. Bue, Jr.
District Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Houston Division

NO. 73-H-993

RICHARD E. MOORE, ET AL

v.

HARRIS COUNTY COMMISSIONERS COURT, ET AL

NO. 73-H-1033

BLACKIE NEELEY

v.

HARRIS COUNTY COMMISSIONERS COURT, ET AL

Before GEE, Circuit Judge, SINGLETON and BUE, District Judges. GEE, Circuit Judge:

Plaintiffs are duly elected Justices of the Peace, Constables and voters of three former Harris County precincts which have been abolished by order of defendants, the County Judge and Commissioners of Harris County, Texas. At the time of the order, and today, the terms to which the plaintiff office-holders were elected had not expired. The Commissioners acted under authority of a Texas Constitutional provision[1] permitting revision of precincts from time to time "for the convenience of the people" and Article 2351½, Texas Revised Civil Statutes. This article provides, in pertinent part, as follows:

> (c) When boundaries of justice of the peace precincts are changed, so that existing precincts are

1. Tex. Const. Art. 5, §18.

> altered, new precincts are formed, or former precincts are abolished, if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed, he shall continue in office as justice or constable of that precinct for the remainder of the term to which he was elected or appointed. If more than one justice or constable resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies; provided, however, that in precincts having two justices, if two reside therein, both shall continue in office, and if more than two reside therein, both offices shall become vacant.

The manner in which defendants' order redrew the Harris County precinct lines resulted in the vacating of Plaintiffs' offices by force of the quoted portion of the statute.

The statute is attacked on numerous grounds, most of which we need not discuss, since we conclude that its effect to end the term of some of the duly elected justices of the peace and constables of Harris County constitutes an impermissible abridgement of the franchise of those entitled to vote for them and a violation of the equal protection clause, both without the showing of any compelling state interest to be served thereby.

Defendants are local officers, functioning pursuant to statewide policies embodied in the constitutional and statutory provisions cited. An injunction is sought on constitutional grounds against the effect of Article 2351½ to truncate the term of some of the plaintiffs and set at nought the vote of those who elected them to these offices. These offices are the creation of state law; the jurisdiction

of the offices in question is statewide,[2] and the statute attacked is of statewide effect and impact. The constitutional issues raised are not facially insubstantial, and the complaints clearly called for the convening of a three-judge court.

We are not unmindful of the decision in *Snowden v. Hughes,* 321 U.S. 1 (1944), in which the right of a citizen to be a candidate for state office was held to be unprotected by the privileges and immunities clause of the Fourteenth Amendment, or that in dicta the court extended its holding to the right to vote and hold such office. But we are persuaded that this case is not controlled by *Snowden.*

In the first place, on its facts *Snowden* involved a candidacy only. We treat here of a Texas state office, which has been repeatedly held by the courts of Texas to be a species of property, *e.g., State ex rel Jennett v. Owens,* 63 Tex. 261 (1885). The Fourteenth Amendment might well be seen as extending protection to an elected and qualified office-holder, but not to a mere aspirant as in *Snowden.*

In the second place, it appears that events have marched by the view taken in *Snowden* of the division of state and federal responsibilities.[3] More recent Supreme Court decisions have sapped the force of *Snowden's* vision of the federal structure. The "privileges and immunities" clause of the Fourteenth Amendment has become irrele-

2. E.g. Arts. 2385, 6885, Tex. Rev. Civ. Stat. The jurisdiction of a justice of the peace is to be distinguished from the venue limitations of Art. 2390, R.C.S.

3. See Mancuso v. Taft, 476 F.2d 187, 196-97 n. 14 (1st Cir. 1973).

vant in considering protection of the right to run and vote for state office. Modern concepts of equal protection have assumed that burden. *Bullock v. Carter,* 405 U.S. 134, 31 L.Ed.2d 92 (1972); *White v. Regester,* ____ U.S.____, 37 L.Ed.2d 314 (1973); *Harper v. Virginia Bd. of Elections,* 383 U.S. 663, 16 L.Ed.2d 169 (1966); cf. *Oregon v. Mitchell,* 400 U.S. 112, 27 L.Ed.2d 272 (1970).

Insofar as Art. 2351½ operates to truncate the term of a duly elected public official upon the circumstance that a mere convenience redistricting places him in a district with others, it invidiously and irrationally discriminates between him and others not so affected and between the effect of the votes of those who voted or were entitled to vote in his election and voters whose franchise was not so bobbed. No compelling interest was here served by such discrimination.[4] Certainly it was not necessary to effect redistricting in mid-term or, if that were thought pressing, it was not compelling that the office be declared vacant as a result. Indeed, the analogous section pertaining to county commissioners, Art. 2351½ (b), expressly provides that the term of office of a county commissioner is not to be affected by redistricting, even though its effect may be to place his residence outside the precinct for which he was elected.

4. Defendants' only contention which approaches advancing such an interest for *redistricting* is that the old precincts were egregiously disproportionate in population. This is true, but the new districts were clearly not drawn with any ideal of population equality foremost in mind; the order establishing them itself recites that one contains almost two and one-half times as many people as another. Nor would population equalization, if seen as a compelling reason for redistricting and faithfully served in drawing the new precincts, bear any necessary relation to vacating these offices, a different consideration entirely.

The duly elected justices of the peace and constables, plaintiffs here, are entitled to serve the terms to which they were elected. Insofar only as Article 2351½, Texas Revised Civil Statutes mandates otherwise, it is unconstitutional. Insofar only as defendants' order of January 30, 1973, undertakes to appoint other persons to plaintiffs' offices, and to prevent plaintiffs from carrying out the duties and receiving the emoluments of their offices during the term to which they were elected, it is likewise invalid.

/s/ _____
Thomas Gibbs Gee
United States Circuit Judge

/s/ _____
John V. Singleton, Jr.
United States District Judge

/s/ _____
Carl O. Bue, Jr.
United States District Judge

EXHIBIT C

Article 5, Texas Constitution

§ 18. Division of counties into precincts; election of constable and justice of the peace; county commissioners and county commissioners court

Section. 18. Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people into precincts, not less than four and not more than eight. Divisions shall be made by the Commisisoners Court provided for by this Constitution. In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for four years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace. Each county shall in like manner be divided into four commissioners precincts in each of which there shall be elected by the qualified voters thereof one County Commissioner, who shall hold his office for four years and until his successor shall be elected and qualified. The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed. As amended Nov. 2, 1954.

EXHIBIT D

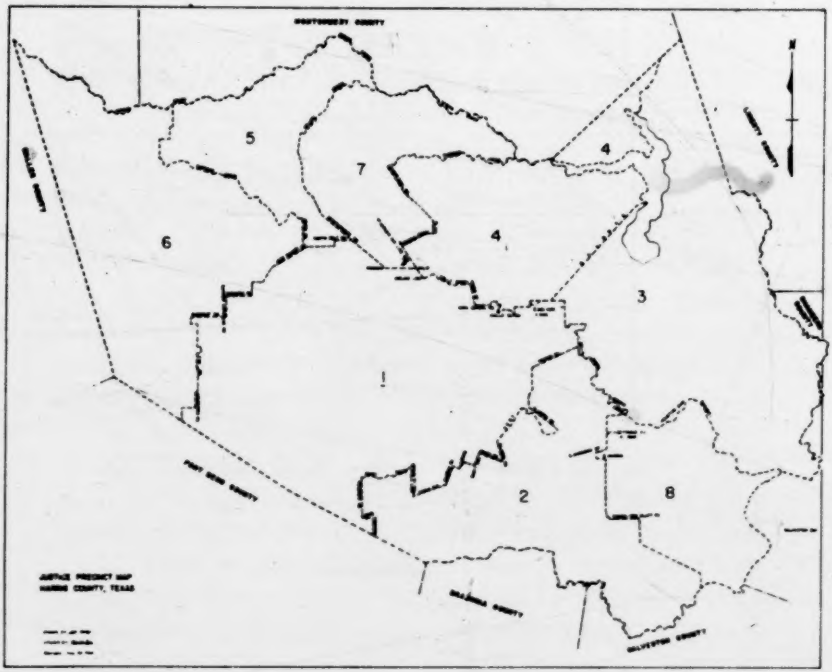


EXHIBIT E

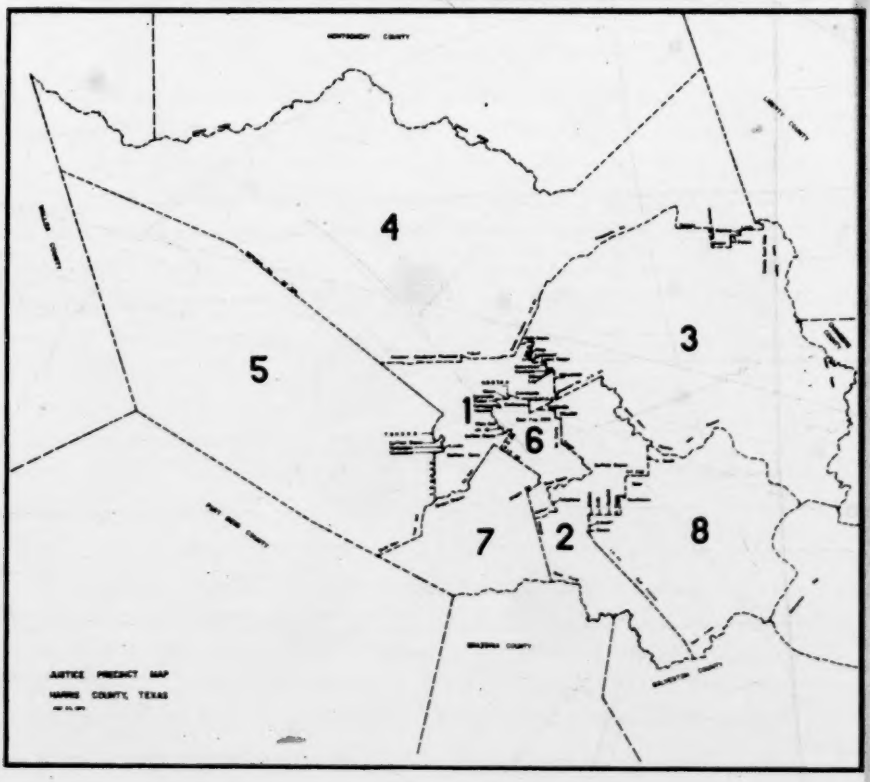


EXHIBIT F

TEXAS ELECTION CODE

Art. 1.05. Ineligibility

No person shall be eligible to be a candidate for, or to be elected or appointed to, any public office in this state unless he is a citizen of the United States eligible to hold such office under the Constitution and laws of this state and is under none of the disabilities for voting which are stated in Article VI, Section 1 of the Constitution of Texas on the date of his appointment or of the election at which he is elected, and unless he will have resided in this state for a period of twelve months next preceding the applicable date specified below, and for any public office which is less than statewide, shall have resided for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled:

(1) For a candidate whose name is printed on the ballot for a general (first) primary election, the applicable date is the last day on which any candidate for the office involved could file his application to have his name printed on the ballot for that primary election.

(2) For an independent or nonpartisan candidate in a general or special election, the applicable date is the last day on which the candidate's application for a place on the ballot could be delivered to the appropriate officer for receiving the application.

(3) For a write-in candidate, the applicable date is the day of the election at which the candidate's name is written in.

(4) For a party nominee who is nominated by any method other than by primary election, the applicable date is the day on which the nomination is made.

(5) For an appointee to an office, the applicable date is the day on which the appointment is made.

The foregoing requirements shall not apply to any office for which the Constitution or statutes of the United States or of this state prescribe qualifications in conflict herewith, and in case of conflict the provisions of such other laws shall control.

Except as provided in Section 104 of the code,[1] no ineligible candidate shall ever have his name placed upon the ballot at any primary, general or special election. No ineligible candidate shall ever be voted upon nor have votes counted for him at any such primary, general or special election for the purpose of nominating or electing him, but votes cast for an ineligible candidate shall be taken into account in determining whether any other candidate received the necessary vote for nomination or election. No person who advocates the overthrow by force or violence or change by unconstitutional means of the present constitutional form of government of the United States or of this state, shall be eligible to have his name printed on any official ballot in any general, special or primary election in this state.

Amended by Acts 1967, 60th Leg., p. 1861, ch. 723, § 4, eff. Aug. 28, 1967.

EXHIBIT G

Art. 2351½. Change in boundaries of commissioners precincts and justice of the peace precincts

(a) Whenever the Commissioners Court changes the boundaries of commissioners precincts or of justice precincts, it may specify in its order a future date, not later than the first day of January following the next general election, on which the changes shall become effective. If an election for any precinct office is held before the effective date of the order, the office shall be filled at the election by the voters of the precinct as it will exist on the effective date of the change in boundaries. A person who has resided within the territory embraced in the new boundaries for the length of time required to be eligible to hold the office shall not be rendered ineligible by virtue of the precinct's not having been in existence for that length of time.

(b) When boundaries of commisisoners precincts are changed, the terms of office of the commisisoners then in office shall not be affected by such change, and each commissioner shall be entitled to serve for the remainder of the term to which he was elected even though the change in boundaries may have placed his residence outside of the precinct for which he was elected.

(c) When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished, if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed, he shall continue in office as justice or constable of that

precinct for the remainder of the term to which he was elected or appointed. If more than one justice or constable resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies; provided, however, that in precincts having two justices, if two reside therein, both shall continue in office, and if more than two reside therein, both offices shall become vacant.

Added by Acts 1965, 59th Leg., p. 1523, ch. 664, § 1, eff. Aug. 30, 1965.